

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. 01-97
)	for
Cemex)	Administrative Civil Liability
430 North Vineyard, Suite 500)	
Ontario, CA 91761)	
<u>Attention: Ms. Christine Jones</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Cemex is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385 (c)(2) of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within sixty days of the date of issuance of this Complaint. The hearing in this matter will be scheduled for the Board's regular meeting on December 7, 2001 at the City Council Chambers, 25541 Barton Road, Loma Linda, California. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Cemex, a ready-mixed concrete products company, located at 1730 West Main Street, in the City of Orange, California (hereinafter facility), is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 830S014504.
5. Cemex is alleged to have violated Provisions A.1, A.2, B.3 and, C.1 of the General Permit. Provision A.1 states, "...materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited." Provision A.2 states, "Storm water discharges and non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance." Provision B.3 states, ".....Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement." Cemex has failed to properly develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and Monitoring and Reporting Requirements and has discharged non-storm water containing pollutants to the

storm drain system from its facility. Pursuant to Water Code Section 13385 (a)(2), civil liability may be imposed for the preceding violations.

6. On August 22, 2001, the City of Orange Code Enforcement Division (OCED) responded to a complaint from Santa Monica Seafood Distributors, located next door to Cemex, regarding a large release of industrial wastewater that had originated at the Cemex facility, flooded their back dock area, and discharged to the Santa Ana River.
7. On August 24, 2001, in response a to request by OCED and the Orange County Flood Control District, Regional Board staff (staff) conducted an inspection of the Cemex facility. Contact was made with Mr. Gary Garcia, the plant manager for the facility. Staff requested information from Mr. Garcia regarding the discharge of wastewater on August 22, 2001. Mr. Garcia was unable to explain what had happened at the facility. He indicated that no one at the facility was aware of the discharge until it had been brought to their attention by the city inspectors. During a physical inspection of the facility, it was noted that the only Best Management Practices (BMPs) designed to prevent the commingling of wastewater and other pollutants with storm water and non-storm water runoff at the facility was a single 6-inch asphalt berm. Mr. Garcia was informed by staff that based on site topography, the berm was inadequate to control large storm water and non-storm water discharges. In addition, there was evidence of prior discharges of unauthorized, non-storm water from the facility. Personnel from Santa Monica Seafood stated that this was the third large discharge that had occurred in the past six months. Mr. Garcia was told that unauthorized, non-storm discharges are strictly prohibited by the General Permit and he was requested to immediately remedy the aforementioned problems.
8. On September 7, 2001, staff performed a follow-up inspection. On that date, staff observed an unauthorized, non-storm water discharge of wash water to the street curb located at the northern-most driveway of the facility. At that time there were no BMPs implemented to prevent this discharge from leaving the facility, and the facility personnel again indicated that they were unaware of the discharge until it was brought to their attention by staff. Contact was then made with Ms. Christine Jones, the Regional Environmental Manager, who accompanied staff on a physical inspection of the facility. Several major problems were noted, including: evidence of previous discharges to the street curb; large amounts of accumulated sediments in the storm swale; inadequate or no BMPs to prevent sediments from migrating off the facility; and extensive oil spills and stains throughout the facility. This was the second non-storm water discharge observed by staff within a two-week period. Ms. Jones was told that unauthorized, non-storm discharges are strictly prohibited by the General Permit and she was requested to immediately remedy the aforementioned problems.
9. The facility had operated under the name City Concrete Productions, Inc. from 1992 to 1999. Cemex purchased the facility in 1999. A review of the past annual reports submitted by Cemex shows that:

- a) In its 1999-2000 annual report, the facility was scheduled to collect storm water samples pursuant to group monitoring requirements, but failed to sample as indicated in the group monitoring plan. There was no explanation as to why sampling was not conducted; and,
 - b) In the past three (3) annual reports, the company certified that they had reviewed the SWPPP to assure that it addressed existing potential pollutant sources and structural and non-structural BMPs; and that it contained an updated site map, a spill response plan, employee training procedures and logs, and monitoring procedures. At the time of these inspections, it appeared that not all elements of the SWPPP had been implemented and that the SWPPP was not site specific.
- 10. Cemex violated the General Permit by not developing and effectively implementing BMPs, discharging unauthorized, non-storm water containing pollutants, not collecting samples per group monitoring program requirements, and by failing to report discharges in violation of the General Permit.
 - 11. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.
 - 12. The amount of wash water containing elevated concentrations of pollutants discharged to the Santa Ana River on August 22, 2001 was calculated to be approximately 4,000 gallons. The exact volume of the unauthorized, non-storm water discharge observed on September 7, 2001 is unknown, but estimated to be less than 1,000 gallons.
 - 13. Pursuant to Section 13385(c), Cemex is civilly liable in the amount of \$20,000 (\$10,000 per day for 2 days of violations) and an additional \$30,000 based on flow (4,000-1,000=3,000 gallons @\$10 per gallon) for the violations cited in Paragraphs 6, 7, 8, 9 and 10, above. The total maximum liability for the violations on August 22, 2001 and September 7, 2001 is \$50,000.
 - 14. Regional Board staff spent a total of 6 hours investigating this incident (@\$70/hr, the total cost for staff time is \$420). Cemex saved approximately \$2,000 by not developing a site specific SWPPP and \$5,000 by not implementing adequate BMPs throughout the facility and by not providing employees with proper training (Cemex admitted that employees were not properly trained). These factors were considered in assessing the penalty indicated in Paragraph 15, below.

15. Section 13385 (e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes civil liability be imposed on Cemex by the Board in the amount of \$10,000 for the violations cited above.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check or money order payable to the State Water Resources Control Board for the amount of civil liability proposed under Paragraph 15, above, to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

If you have any questions, please contact Mark Smythe at (909) 782-4998, or Aaron Buck, at (909) 782-4469. For legal questions, contact the Regional Board's staff counsel, Jorge Leon at (916) 341-5180.

Date

Gerard J. Thibeault
Executive Officer

In the matter of:)	Complaint No. 01-97
)	for
Cemex)	Administrative Civil Liability
430 North Vineyard, Suite 500)	
Ontario, CA 91761)	
<u>Attention: Ms. Christine Jones</u>)	

WAIVER OF HEARING

I agree to waive Cemex's right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. 01-97. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$10,000. I understand that I am giving up Cemex's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

Cemex